

Amendment under 37 C.F.R. § 1.116  
U.S. Application No. 10/020,173

**AMENDMENTS TO THE DRAWINGS**

Submitted herewith is a (1) proposed drawing, as requested by the Examiner.

Attachment: one (1) proposed Drawing

### **REMARKS**

Claims 1-23 have been examined. The Examiner has repeated the rejection of claims 1, 2, 3, 6-9 and 14-20 under 35 U.S.C. § 102(b) in view of Blew, the rejection of claims 1 and 14 under 35 U.S.C. § 102(b) in view of Misono, and the rejection of claims 4, 5, 10-13, 21 and 22 under 35 U.S.C. § 103(a) in view of Blew, Plessner and Rahman.

Further, claims 14-23 have been rejected under 35 U.S.C. § 103(a) in view of a newly cited reference, i.e., EP 0564130 to Rahman (cited in July 22, 2003 IDS), and Blew, and claims 1-13 and 23 have been rejected under 35 U.S.C. § 103(a) in view of a newly cited reference, i.e., GB 2159291 to Heywood, and Blew.

### **Preliminary Matters**

The Examiner has objected to the drawings under 37 C.F.R. § 1.83(a) as not showing every feature of the invention specified in the claims. In particular, the Examiner maintains that the claimed “splice box”, as set forth in claims 1, 14 and 23, must be shown or the feature canceled from the claim. Accordingly, Applicant submits herewith a proposed new drawing which depicts the claimed splice box, and Applicant has amended the specification to insert reference numerals for the new drawing. Since such feature is adequately supported in the specification, as originally filed, Applicant submits that no new matter has been added.

In addition, the Examiner has objected to claims 1, 14 and 23 due to minor informalities. Regarding claims 1 and 14, the Examiner maintains that the phrase, “respective splice box” is unclear. Accordingly, Applicant has removed the term “respective” from claims 1 and 14.

Applicant submits that such amendments overcome the objection. Although the Application is currently after final rejection, Applicant respectfully requests that the amendments be entered, since such amendments are made at the request of the Examiner.

Regarding claim 23, the Examiner maintains that it is unclear what is meant by the phrase, “partially disposed inside said optical fiber cavity.” Accordingly, Applicant notes that a non-limiting embodiment of the claimed “means” is disclosed on pg. 3 of the Application. In particular, paragraph [13] of pg. 3 discloses that axial movement of buffer tubes, with respect to a jacket, is severely restricted when the ends of a bundle support member are secured to respective splice boxes. Since portions of the bundle support member are disposed inside the optical fiber cavity, as shown in the non-limiting embodiment of Fig. 1, Applicant submits that the claimed phrase, “partially disposed inside said optical fiber cavity” is not unclear. Applicant respectfully requests the Examiner to contact the undersigned if he is still uncertain as to the meaning of the phrase.

**Rejections under 35 U.S.C. § 102(b)**

1. As stated above, the Examiner has continued to reject claims 1, 2, 3, 6-9 and 14-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,448,670 to Blew et al. (“Blew”).

The Examiner maintains that Blew “inherently” discloses that the alleged bundle support member (i.e. central support member 36) is connected to a splice box in order to support the

cable, i.e. between two poles. The Examiner further refers to the third paragraph on pg. 1 of the Application.

Applicant submits, however, that the above cited feature of claim 1 is not inherent. For example, evidence of inherency in a reference “must make it clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” Continental Can Co. USA Inc. v. Monsanto Co., 948 F.2d 1264, 1269 (Fed. Cir. 1991) (emphasis added). “Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” Id. (citing In re Oelrich, 666 F.2d 578, 581 (fed. Cir. 1981) (quoting Hansgirg v. Kemmer, 102 F.2d 212, 214 (C.C.P.A. 1939))) (emphasis in original); see also Scaltech Inc. v. Retec/Tetra L.L.C., 51 U.S.P.Q.2d 1055, 1059 (Fed. Cir. 1999); and In re Robertson, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999).

As noted by the Examiner, in paragraph [03] (Background Section) of the current Application, the Applicant discloses that central tube cables are typically installed between telephone polls, and the ends of the cables are connected to splice boxes. Since Blew discloses a central tube cable (i.e., Abstract), the Examiner appears to be citing to paragraph [03] of the Background Section of the current Application as evidence that it is inherent that the ends of central tube cables are connected to splice boxes.

Nevertheless, in regard to such “conventional” central tube cables of paragraph [03], the Applicant discloses that the cables are connected to the splice boxes by fixedly securing the radial strength members to the splice boxes. As stated in paragraph [04], since the buffer tubes

and fibers of the conventional central cable tubes are not restrained against axial movement, the tubes and fibers may be pulled out of the splice box due to strain of the load. On the other hand, claim 1 recites that the bundle support member is securable to the splice box. Such configuration severely restricts axial movement of the buffer tubes, so that the buffer tubes and fibers will not be pulled away from the splice box (non-limiting embodiment of paragraph [13]).

In view of the teachings of Blew and paragraph [03] of the present Application, Applicant submits that one skilled in the art would be inclined to secure the fiber optic cable 20 to a splice box by use of the alleged radial strength members 34', rather than a bundle support member (Fig. 6 of Blew). Therefore, a teaching to secure the fiber optic cable 20 to a splice box by use of the alleged bundle support member, i.e., central support member 36, is not "necessarily present" in the Blew reference, as indicated above for evidence of inherency. Rather, it appears that any teaching or suggestion of the claimed features would be based on impermissible hindsight reasoning.

Accordingly, Applicant submits that claim 1 is patentable over the cited reference, and respectfully requests the Examiner to reconsider and withdraw the rejection.

Since claim 14 contains features that are analogous to the features recited in claim 1, Applicant submits that claim 14 is patentable over Blew for at least analogous reasons as presented above.

Further, since claims 2, 3, 6-9 and 15-20 are dependent upon either claim 1 or claim 14, Applicant submits that such claims are patentable at least by virtue of their dependency.

2. Rejection of claims 1 and 14 under 35 U.S.C. § 102(b) as being anticipated by JP 2-238412 to Misono et al. ("Misono")

In the current Office Action, the Examiner maintains that Misono "inherently" discloses that the bundle support member is connected to a splice box in order to support the cable between two vertical poles. The Examiner again refers to the third paragraph on pg. 1 of the Application.

As stated above, evidence of inherency in a reference "must make it clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Continental Can Co. USA Inc. v. Monsanto Co., 948 F.2d 1264, 1269 (Fed. Cir. 1991) (emphasis added). "Inherency, however may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id. (citing In re Oelrich, 666 F.2d 578, 581 (fed. Cir. 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214 (C.C.P.A. 1939))) (emphasis in original); see also Scaltech Inc. v. Retec/Tetra L.L.C., 51 U.S.P.Q.2d 1055, 1059 (Fed. Cir. 1999); and In re Robertson, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999).

For similar reasons as set forth above in the rejection of claim 1 in view of the Blew reference, Applicant submits that one skilled in the art would be inclined to secure the cable of Misono to a splice box by use of the alleged radial strength members 8 (Fig. 2 of Misono). A teaching to secure the cable of Misono to a splice box by use of the alleged bundle support member, i.e., tension member 1, is not "necessarily present" in the Misono reference, as

indicated above for evidence of inherency. Rather, it appears that any teaching or suggestion of the claimed features would be based on impermissible hindsight reasoning.

Accordingly, Applicant submits that claim 1 is patentable over the cited reference, and respectfully requests the Examiner to reconsider and withdraw the rejection.

Since claim 14 contains features that are analogous to the features recited in claim 1, Applicant submits that claim 14 is patentable over Misono for at least analogous reasons as presented above.

**Rejections under 35 U.S.C. § 103(a)**

1. Rejection of claims 4, 5, 10-13, 21 and 22 under 35 U.S.C. § 103(a) in view of Blew, U.S. Patent No. 4,709,983 to Plessner et al. ("Plessner") and U.S. Patent No. 5,390,273 to Rahman et al. ("Rahman US").

The Examiner has reiterated the rejection of claims 4, 5, 10-13, 21 and 22 in the present Office Action. However, since Plessner and Rahman US fail to cure the deficient teachings of Blew, as outlined above, Applicant submits that claims 4, 5, 10-13, 21 and 22 are patentable at least by virtue of their dependency.

2. Rejection of claims 1-13 and 23 under 35 U.S.C. § 103(a) in view of GB 2159291 to Heywood ("Heywood") in view of Blew

**A. Claim 1**

Since Heywood fails to cure the deficient teachings of Blew, Applicant submits that claim 1 is patentable over the combination of the cited references for at least analogous reasons as presented above.

**B. Claims 2-13**

Since claims 2-13 are dependent upon claim 1, Applicant submits that such claims are patentable over the cited references at least by virtue of their dependency.

**C. Claim 23**

Since claim 23 contains features that are analogous to the features recited in claim 1, Applicant submits that such claim is patentable for at least analogous reasons as presented above.

**3. Rejection of claims 14-23 under 35 U.S.C. § 103(a) as being unpatentable over EP 0564130 to Rahman ("Rahman EP") in view of Blew**

**A. Claim 14**

Since Rahman EP fails to cure the deficient teachings of Blew, Applicant submits that claim 14 is patentable over the combination of the cited references for at least analogous reasons as presented above.



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**B. Claims 15-22**

Since claims 15-22 are dependent upon claim 14, Applicant submits that such claims are patentable over the cited references at least by virtue of their dependency.

**C. Claim 23**

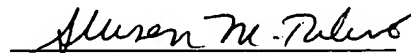
Since claim 23 contains features that are analogous to the features recited in claim 1, Applicant submits that such claim is patentable for at least analogous reasons as presented above.

**Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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